

AMENDED IN ASSEMBLY APRIL 7, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1816**

---

**Introduced by Assembly Member Yamada**

February 18, 2014

---

An act to amend Section 1420 of the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1816, as amended, Yamada. Long-term health care facilities.

(1) Existing law provides for the licensure and regulation by the State Department of Public Health of health care facilities, including long-term health care facilities, as defined. Existing law establishes procedures to be followed when the department receives a written or oral complaint about a long-term health care facility. A complaint is defined to mean any notice to the department, other than a report from the facility, of an alleged violation of applicable requirements of state or federal law or any alleged facts that might constitute a violation.

This bill would require the department to complete its investigation of the complaint within 40 working days of its receipt, except that this period may be extended up to an additional 30 days if the department has diligently attempted, but has not been able, to ~~obtain~~, *obtain* necessary evidence related to the investigation. The bill would require the department, if it extends an investigation beyond 40 working days, to notify the complainant, in writing, of the basis for the extension. *The bill would also require, if the investigation exceeds 70 working days due to circumstances beyond the department's control, that the department notify the complainant in writing and by telephone or e-mail of the delay in the investigation and the reason for the delay.* The bill

would require, effective July 1, 2015, that the department's written determination provide specific findings concerning each alleged violation, and include a summary of the evidence upon which the determination is based. The bill would require the department to comply with those specified time periods established for investigations and inspections of complaints from a facility of an alleged violation of applicable requirements of state or federal law or any alleged facts that may constitute an alleged violation of these requirements.

(2) Existing law provides the complainant with 5 business days after receipt of the notice of the department's determination in which to request an informal conference.

This bill would, instead, provide the complainant with 15 days after receipt of the notice in which to request an informal conference.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1420 of the Health and Safety Code is  
2 amended to read:  
3 1420. (a) (1) Upon receipt of a written or oral complaint, the  
4 department shall assign an inspector to make a preliminary review  
5 of the complaint and shall notify the complainant within two  
6 working days of the receipt of the complaint of the name of the  
7 inspector. Unless the department determines that the complaint is  
8 willfully intended to harass a licensee or is without any reasonable  
9 basis, it shall make an onsite inspection or investigation within 10  
10 working days of the receipt of the complaint. In any case in which  
11 the complaint involves a threat of imminent danger of death or  
12 serious bodily harm, the department shall make an onsite inspection  
13 or investigation as soon as practicable, and in no case more than  
14 24 hours of the receipt of the complaint. In any event, the  
15 complainant shall be promptly informed of the department's  
16 proposed course of action and of the opportunity to accompany  
17 the inspector on the inspection or investigation of the facility. Upon  
18 the request of either the complainant or the department, the  
19 complainant or his or her representative, or both, may be allowed  
20 to accompany the inspector to the site of the alleged violations  
21 during his or her tour of the facility, unless the inspector determines  
22 that the privacy of any patient would be violated thereby.

1 (2) When conducting an onsite inspection or investigation  
2 pursuant to this section, the department shall collect and evaluate  
3 all available evidence and may issue a citation based upon, but not  
4 limited to, all of the following:

5 (A) Observed conditions.

6 (B) Statements of witnesses.

7 (C) Facility records.

8 (3) The department shall complete its investigation within 40  
9 working days from receipt of the complaint. The 40-working-day  
10 period may be extended up to an additional 30 days if the  
11 department has diligently attempted, but has not been able to  
12 obtain, necessary evidence related to the investigation. The  
13 department shall analyze its compliance with this requirement in  
14 its annual system and staffing analysis prepared pursuant to  
15 subparagraph (B) of paragraph (2) of subdivision (d) of Section  
16 1266. *This analysis shall include, but not be limited to, a tabulation*  
17 *of open investigations and completed investigations that*  
18 *summarizes the number of extensions and their duration.*

19 (4) If the department extends an investigation beyond 40  
20 working days, it shall notify the complainant, in writing, of the  
21 basis for the extension, and shall include in the notice any  
22 outstanding evidence and the sources from which the evidence has  
23 been sought, and the anticipated completion date. *In the unusual*  
24 *event that an investigation must be extended beyond 70 working*  
25 *days due to circumstances beyond the department's control, the*  
26 *department shall notify the complainant in writing and by telephone*  
27 *or e-mail of the delay in the investigation and the reason for the*  
28 *delay. The department shall, thereafter, complete the investigation*  
29 *as expeditiously as possible.*

30 (5) Within 10 working days of the completion of the complaint  
31 investigation, the department shall notify the complainant and  
32 licensee, in writing, of the department's determination as a result  
33 of the inspection or investigation.

34 (6) Effective July 1, 2015, the department's written  
35 determination shall provide specific findings concerning each  
36 alleged violation, and shall include a summary of the evidence  
37 upon which the determination is made. The written determination  
38 shall not disclose the names of individual residents.

39 (b) Upon being notified of the department's determination as a  
40 result of the inspection or investigation, a complainant who is

1 dissatisfied with the department's determination, regarding a matter  
2 which would pose a threat to the health, safety, security, welfare,  
3 or rights of a resident, shall be notified by the department of the  
4 right to an informal conference, as set forth in this section. The  
5 complainant may, within 15 days after receipt of the notice, notify  
6 the director in writing of his or her request for an informal  
7 conference. The informal conference shall be held with the  
8 designee of the director for the county in which the long-term  
9 health care facility that is the subject of the complaint is located.  
10 The long-term health care facility may participate as a party in this  
11 informal conference. The director's designee shall notify the  
12 complainant and licensee of his or her determination within 10  
13 working days after the informal conference and shall apprise the  
14 complainant and licensee in writing of the appeal rights provided  
15 in subdivision (c).

16 (c) If the complainant is dissatisfied with the determination of  
17 the director's designee in the county in which the facility is located,  
18 the complainant may, within 15 days after receipt of this  
19 determination, notify in writing the Deputy Director of the  
20 Licensing and Certification Division of the department, who shall  
21 assign the request to a representative of the Complainant Appeals  
22 Unit for review of the facts that led to both determinations. As a  
23 part of the Complainant Appeals Unit's independent investigation,  
24 and at the request of the complainant, the representative shall  
25 interview the complainant in the district office where the complaint  
26 was initially referred. Based upon this review, the Deputy Director  
27 of the Licensing and Certification Division of the department shall  
28 make his or her own determination and notify the complainant and  
29 the facility within 30 days.

30 (d) Any citation issued as a result of a conference or review  
31 provided for in subdivision (b) or (c) shall be issued and served  
32 upon the facility within three working days of the final  
33 determination, unless the licensee agrees in writing to an extension  
34 of this time. Service shall be effected either personally or by  
35 registered or certified mail. A copy of the citation shall also be  
36 sent to each complainant by registered or certified mail.

37 (e) A miniexit conference shall be held with the administrator  
38 or his or her representative upon leaving the facility at the  
39 completion of the investigation to inform him or her of the status  
40 of the investigation. The department shall also state the items of

1 noncompliance and compliance found as a result of a complaint  
2 and those items found to be in compliance, provided the disclosure  
3 maintains the anonymity of the complainant. In any matter in which  
4 there is a reasonable probability that the identity of the complainant  
5 will not remain anonymous, the department shall also notify the  
6 facility that it is unlawful to discriminate or seek retaliation against  
7 a resident, employee, or complainant.

8 (f) For purposes of this section, “complaint” means any oral or  
9 written notice to the department, other than a report from the  
10 facility, of an alleged violation of applicable requirements of state  
11 or federal law or any alleged facts that might constitute a violation  
12 of these requirements.

13 (g) The department shall apply the timeframes for investigation  
14 or inspection established in this section to a report from the facility  
15 of an alleged violation of applicable requirements of state or federal  
16 law or any alleged facts that might constitute a violation of those  
17 requirements.

18 (h) (1) *It is the intent of the Legislature in enacting the*  
19 *amendments that added this subdivision that the department*  
20 *endeavor to complete investigations of complaints made on behalf*  
21 *of a resident of a long-term health care facility within 40 days.*

22 (2) *It is also the intent of the Legislature that only those*  
23 *complaints that require additional time because the department*  
24 *has diligently attempted, but has been unable, to obtain necessary*  
25 *evidence related to the investigation receive an extension of up to*  
26 *30 days, as necessary to complete the investigation.*

27 (3) *It is the Legislature’s further intent that after 70 working*  
28 *days, if a complaint investigation has not been completed, the*  
29 *department shall contact the complainant to share with the*  
30 *complainant the status of the complaint and the reason for the*  
31 *delay to the extent that the information can be shared.*